IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 239 of 2000
in
SPECIAL CIVIL APPLICATION No 385 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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VINUBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 239 of 2000
MR BHASKAR TANNA WITH MR SV RAJU for Appellant
MS HARSHA DEVANI, AGP for Respondents No. 1, 2 and 6
No one appeared for Respondents No.3, 4 and 5

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 31/08/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This Letter Patent Appeal is directed against the judgment and order dated 8th March, 2000 passed by the learned Single Judge in Special Civil Application No.385 of 2000, whereby the Special Civil Application was rejected and the notice was discharged.

2. The appellant, herein Vinubhai Dahyabhai Patel filed Special Civil Application under Article 226 of the Constitution of India with the allegations as under :-

(i) The petitioner claims to be the Vice President of Surat City Congress Committee. He is originally a resident of village Pithawadi of Savarkundala Taluka in Amreli District. and that he has settled at Surat.

(ii) The petitioner claims that he is attached with social and charitable activities in various Social Charitable and Religious Institutions at his native place in Savarkundala Taluka in Amreli District as well as in the Surat District and enjoys very high reputation as a social and political worker among the general public of Surat District.

(iii) The Vadtalvasi Shri Lakshmi Narayan Dev Temple Trust is a registered trust under the provisions of Bombay Public Trusts Act. This Trust owns and occupies the land bearing Revenue Survey Nos.70, 71 and 73 situated in the sim of village Karanj, Taluka Choryasi, District. Surat. This Public Trust seeks to help the Satsangies of Swaminarayan Sampradaoy who are economically backward and poor.

(iv) It is a Gujarat Co-operative Society of poor Satsangies of the Swaminarayan Sampradaoy constituted and registered under the provisions of Gujarat Co-operative Societies Act so as to provide poor Satsangies of the Swaminarayan Sampradaoy small places for shelter.

(v) The said Temple Trust executed an Agreement to Sale the aforesaid land of Revenue Survey Nos.70, 71 and 73 situated in the sim of village Karank, District Surat to the Swaminarayannagar Co-operative Housing Society Limited on or about 12th September, 1973 and under the said Agreement of Sale, Rs.20,000/- (Rupees Twenty Thousand Only) was paid towards earnest money. The Agreement of Sale of the said land was executed by the Trustee for and on behalf and in favour of the said Society for the purpose of construction of dwelling

accommodation for the members of the said Co-operative Housing Society. This agreement was executed in favour of its promoter Shri Shantilal Motilal Jariwala.

(vi) Subsequently, the said Trust executed the Agreement for transferring and assigning the right to purchase the said land of Revenue Survey Nos.70, 71 and 73 in favour of the Swaminarayannagar Co-operative Housing Society Limited and the said Trust executed the Bana-Khat after obtaining the necessary permission from the Charity Commissioner on 11th June, 1973.

(vii) However, on account of the restrictions on transferring the place under the provisions of Section 63 of the Tenancy Act as well as Gujarat Land Prohibition of Alienation Act, 1972, an application for obtaining necessary permission was to be made and subsequently the Urban Land (Ceiling and Regulation) Act, 1976 came into operation and the said Temple Trust assured and undertook to execute the Bana Khat in favour of the said Swaminarayannagar Co-operative Housing Society Limited and on this basis and under the provisions of Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, possession of the land could not be handed over to the said society as some of the portion was encroached upon by the hutment dwellers.

(viii) The Temple Trust backed out from the said transaction and since the Trust failed to perform its part of the contract, the said Swaminarayan Nagar Co-operative Housing Society and its Promoter Member and Chairman Shri Shantilal Motilal Jariwala filed a Special Civil Suit No.479 of 1974 for specific performance of the Agreement and for execution of the Sale Deed of the said land of Revenue Survey Nos.70, 71 and 73 in the Court of Civil Judge (S.D.), Surat.

(ix) The said suit came to be dismissed and the defendant Trustee of the said Trust was ordered to repay the amount of earnest money of Rs.20,000/- (Rupees Twenty Thousand Only) to the plaintiff by the judgment and decree dated 30th November, 1990.

(x) Against the aforesaid judgment and decree passed by the Court of Civil Judge (S.D.), Surat the plaintiffs of the said suit viz. Swaminarayan Co-operative Housing Society Limited filed Fist Appeal No.239 of 1991 before the High Court.

(xi) The appeal was admitted and the parties to the said appeal are directed to maintain status-quo by

the order passed in Civil Application No.1185 of 1991 in First Appeal No.239 of 1991.

(xii) During the pendency of the aforesaid Special Civil Suit No.479 of 1974, an order of liquidation was passed by the District Registrar of Co-operative Societies, Surat on 23rd September, 1986. The said order of liquidation was challenged by the Swaminarayannagar Co-operative Housing Society Limited by way of Appeal under Section 153 of the Gujarat Co-operative Societies Act being Appeal No.742 of 1986. The Appeal No.742 of 1986 came to be dismissed by the Registrar of Co-operative Societies, Gujarat State by his judgment and order dated 24th October, 1986. Against the aforesaid judgment and order of the Authority under the Gujarat Co-operative Societies Act, the said Co-operative Society filed a Special Civil Application No.797 of 1987 before this Court. This Special Civil Application No.797 of 1987 was admitted by this High Court and by way of interim order, the status-quo was continued. It has been submitted that the said Special Civil Application is pending for final final hearing before the High Court.

(xiii) That despite the order, directing the parties to maintain status-quo with regard to the aforesaid land of Revenue Survey Nos.70, 71 and 73 of the sim of village Karanj, the respondent in the First Appeal appears to have created a third party's interest on the said land. The office bearers and members of the Swaminarayan Nagar Co-operative Housing Society came to know that the respondent No.4 (Shri Govindbhai Jethabhai Patel) and other persons have acquired interest by paying huge consideration to the Trustee Acharayajis of Vadtal Temple Trust and the respondent No.4 was also trying to raise construction on the said land.

(xix) The appellant of the First Appeal submitted an application to the Municipal Commissioner not to grant permission for making any construction on the said land to the respondent No.4 and also gave notice and intimation to the Temple Trust for not changing the status of the land by creating third party's interest. The said appellant of the First Appeal No.239 of 1991 sought to implead those persons as party respondents in the First Appeal No.239 of 1991 and in fact they were impleaded as party respondents in the First Appeal by the High Court.

(xx) The respondent No.4 herein realized that he was not in a position to put up any construction on the land although he had paid huge consideration to the

Temple Trust and Acharayajis of Vadtal Trust pending the litigation and also realized that his investment in the land for profiteering activities have been waisted and the costs and price of the land as per the market value was more than Rs.5.00 Crores, as the said land was situated in the developed area of Surat city.

(xxi) The respondent No.4 entered into an agreement with respondent No.3 (Shri Dhirubhai Thesiya who is the father-in-law of the daughter of respondent No.2 - Shri Keshubhai Patel, the Chief Minister of Gujarat State). The respondent No.4, therefore induced respondent No.3 to become a partner of the said transaction and the respondent No.3 appears to have agreed to be a partner of the respondent No.4 for the purpose of development of the said land of Revenue Survey Nos.70, 71, 73 as aforesaid.

(xxii) The respondent No.5 - Shri Dhirubhai Gajera (Member of Legislative Assembly, North Surat Constituency, Surat) also entered into an arrangement for sharing the profit out of the development of the said land.

(xxiii) The respondent No.4 was backed by respondent Nos.3 and 5 coupled with the muscle power, money and support of the State Administration.

(xxix) With a view to deceive the Members of the Swaminarayannagar Co-operative Housing Society and to extort their valuable land and properties with the assistance of the aforesaid respondent Nos.3 and 5, the respondent No.4 started to take possession forcibly from the Members of the said Societies and for that purpose on or about 27th March, 1999, a group of persons with Tractors, Truck, Constructions Equipments, Masonary Force, etc., entered upon the said land of Revenue Survey Nos.70, 71 and 73 of sim of village Karanj, Tal.Choryasi, District Surat.

(xxx) Having come to know about these facts, the poor members of Swaminarayannagar Co-operative Housing Society with a view to prevent the respondent Nos.3, 4 and 5 from snatching away their property and with a view to prevent them from making any construction over the said land, requested them to quit the said land and in this process, the members and poor persons of the Swaminarayannagar Co-operative Housing Society were beaten at the instance of respondent Nos.3, 4 and 5.

(xxxi) The residence of the petitioner is

situated near the said land and whereas he is Vice President of the Surat City Congress Committee of the Indian National Congress-I and since the petitioner is a social and political worker and was the member of the Co-operative Housing Society, poor people rushed to the petitioner and requested him that respondent No.3 Shri Dhirubhai Thesiya, who was a Vevai (father-in-law of the daughter of the Chief Minister) of the Chief Minister and Shri Govindbhai Jethabhai Patel and Shri Dhirubhai Gajera i.e. respondent Nos.4 and 5 were trying to take away the possession of the land, they had come with many persons, vehicles, equipments and accompanied by persons having weapons and trying to enter upon the Co-operative Society's land and that the poor members of the Swaminarayannagar Co-operative Housing Society were beaten and that there was a Court's order to maintain status-quo with regard to this land.

(xxxii) The petitioner felt that the grievances of the poor members of the Swaminarayannagar Co-operative Society was justified and, therefore, accompanied the members of the Swaminarayannagar Co-operative Society to stop and ask the respondent Nos.3, 4 and 5 that there is an order of status-quo passed by the Court and, therefore, they should not enter over the land in question.

(xxxiii) The respondent No.4 told the petitioner that he should not interfere in the matter without knowing the full-facts that Dhirubhai Thesiya was Vevai of the Chief Minister - Kesubhai Patel and that they were partners of the said land which had been purchased by them and the petitioner should not interfere in their affairs. The petitioner was asked to go away from the land, not to take side of Members of the said Society. Shri Dhirubhai Thesiya, respondent No.3 also threatened the petitioner to go away from the land, failing which he will send the petitioner behind bar within no time.

(xxxiv) Immediately, thereafter and within no time, the Police Officer with Mobile Van and Staff from Varachha Police Station i.e. Police Sub Inspector Shri R.D.Marathe, Police Inspector and other Police persons came to the site of the land and asked the petitioner to quit from the said land. The petitioner also pointed out that there was a Court order and they should not assist the persons trying to snatch and deprive of the properties the Swaminarayan Co-operative Housing Society of their property. The Police personnel did not listen and threatened the petitioner to go away from the land, that we would face serious consequences, for siding with

the members of the Swaminarayan Co-operative Society and the petitioner was forcibly driven out from the site, but the petitioner told them that he will agitate the issue before the public.

(xxxv) The petitioner had been threatened by the respondent No.3 that he will have to face dire consequences, if he will make a public issue and that he will see to it that he is detained and booked under Prevention of Anti Social Activities Act, 1965 i.e. PASA and the Police Commissioner will be informed by the Chief Minister to clear all hurdles.

(xxxvi) The aforesaid threat came to be true when a complaint was registered because of the political influence of respondent Nos.3, 4 and 5 against the petitioner and other members of the Swaminayaran Co-operative Society for the offences punishable under Sections 143, 148, 149, 447, 504, 506(2) of the Indian Penal Code read with Section 25(1)(a) of Arms Act as well as under Section 135 of the Bombay Police Act vide C.R.No.I-147 of 1999 before the Varachha Police Station by the respondent No.4. After registration of the aforesaid Criminal Case with regard to the incident dated 27th March, 1999 as stated above, the respondent Nos.3, 4 and 5 brought undue influence upon the respondent No.2 i.e. Chief Minister. The Police Commissioner, Surat was got instructed by the Chief Minister to prepare a paper book under PASA, on the basis of the said complaint dated 27th March, 1999, as aforesaid. It is stated that respondent No.6 i.e. Commissioner of Police, Surat city accordingly prepared the papers against the petitioner under PASA, on the basis of the complaint as aforesaid and subsequent statement was recorded by the Police Officer attached with the Varachha Police Station and on that basis, the order of detention under Section 3 of the PASA Act has been passed against the petitioner.

(xxvii) Apprehending the detention under PASA Act and the facts and circumstances as stated hereinabove, on the basis of which the detention order was passed by the respondent No.6 against the petitioner, the petitioner preferred the Special Civil Application on several grounds.

3. When this Special Civil Application came up for first time before the Court on 27th January, 2000, the Court issued notice returnable on 1st February, 2000. On 1st February, 2000 appearance was entered by the learned Assistant Government Pleader on behalf of the respondent Nos.1 and 6 and he sought time to file affidavit-in-reply

and the matter was posted for 8th February, 2000 with the further order to issue fresh notice to respondent Nos.3 and 5, returnable on 8th February, 2000. Thereafter, the matter came up for hearing on 9th February, 2000. On this date i.e. 9.2.2000 the reply dated 4.2.2000 was filed on behalf of the respondent No.6, the respondent Nos.1, 2, 4 and 6 were reported to be served and the notice on rest of the respondents was not received back and the matter was adjourned to 14th February, 2000. Thereafter, the matter was made to stand over on several dates and on 23rd February, 2000,the affidavit-in-reply dated 23rd February, 2000 was filed. Thereafter, on 1st March, 2000, on the request of the learned Assistant Government Pleader, the matter was entrusted to the Senior Government Pleader. The matter was again adjourned to 6th March, 2000. On 6th March, 2000, a further affidavit-in-reply dated 4th March, 2000 was filed by respondent No.6. In the record of this matter we also find an affidavit dated 8.3.2000 filed by the petitioner. On the basis of these pleadings, the learned Single Judge, after hearing both the sides in para-(8), (9) and (10) of the judgment observed as under :-

"8. Having regard to rival side contentions, it is a settled proposition of law that the pre-detention matters can be entertained by a High Court in exercise of powers under Article 226 of the Constitution of India, but in a given set of circumstances only. This has been laid down by the Apex Court in the case of Additional Secretary, Government of India v. Alka Subhash Gadia (Supra). The categories specified by the Apex Court, wherein a High Court can interfere with the order or entertain the petition at a pre-execution stage in detention matters, can be stated as under :

Where the Courts are prima facie satisfied : (i) that the impugned order is not passed under the Act under which it is purported to have been passed : (ii) that it is sought to be executed against a wrong person : (iii) that it is passed for wrong purpose : (iv) that it is passed on vague extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so.

9. The above view of the Apex Court has been reiterated by the Apex Court in subsequent cases also. In Subhash Muljibhai Gandhi v. L. Himingliana & another (1994) 6 SCC 14 and in N.K.

Bapna v. Union of India and others (199) 3 SCC 512, the Apex Court stated that pre-detention petitions can be entertained only in the situations narrated in the case of Alka Subhash Gadia or the situations of a similar specie.

10. Thus, it is clear that this petition can be entertained provided it is found that the case falls within any one of the five categories stated in the case of Alka Gadia (Supra) or a category which is of similar specie."

4. Thus according to the learned Single Judge, the petition challenging the detention could be entertained even at the pre-execution stage, if it is found that the case falls under any one of the five categories stated in the case of Additional Secretary to The Government of India and Others v/s. Smt. Alka Subhash Gadia and Another. This case decided by the Hon'ble Supreme Court i.e. Additional Secretary to The Government of India and Others v/s. Smt. Alka Subhash Gadia and Another, reported in 1992 Supp. (1) Supreme Court Cases 496, contained these five categories, as mentioned in para-13 of the judgment, which are as under :-

"(i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so."

5. We also find from the order passed by the learned single Judge that he has, thereafter, considered the contentions which were raised before him and that the order of detention had not been executed and the petitioner did not know of the contents of the order or the ground for detention and in the end of para-(12), it has been considered that out of five categories laid down in Additional Secretary to The Government of India and Others v/s. Smt. Alka Subhash Gadia and Another (Supra.) case, this case would fall in which of the five categories, whereas it was argued that it falls under the category that the detention order had been passed for wrong purpose. The same has not been accepted by the learned single Judge in the light of denial of the allegations by the detaining authority. It has been further mentioned that the investigative adjudication, while exercising powers under Article 226 of the

Constitution of India at pre-execution stage, in preventive detention matter cannot be undertaken. It has been further observed by the learned single Judge in the end of para-13 of his order that the Court at this stage, will not enter into the arena, either for the reasons that the proclamation or late proclamation was issued about the absconding of the petitioner which was not the question before the Court and as to whether it would have a bearing on the bonafides of the detaining authority, and that it would be a question to be decided at appropriate stage. So far as the question of absconding the petitioner is concerned, the learned single Judge says at the end of para-14 of his order that he would not make any observations about the absconding of the petitioner or otherwise. The learned single Judge was not inclined to accept the petitioner's case that the detention order has been passed for wrong purpose, which was tried to be canvassed also on the ground that the order had not been served though petitioner was available and that for that very reason, proclamation is delayed one. According to the learned single Judge, the case does not fall under any of the five categories stated in the case of Alka Gadia (Supra) and, therefore, the petition could not be entertained and the same was dismissed.

6. In our considered opinion, in the facts and circumstances of the case, when no reply had been filed on behalf of the respondents although they were impleaded as parties by name and when the affidavit-in-reply had been filed only by the detaining authority, the appropriate course of action should have been to call for the petitioner to be present before the Court and the respondent Nos.1 and 6 to produce the detention order and serve upon the petitioner then and there because on behalf of the petitioner it was insisted that he was very much available at the place where he was supposed to be available and yet he had not been served the detention order. The detailed affidavit-in-reply dated 23rd February, 2000 has been filed by the petitioner before the learned single Judge and he has categorically stated that he was very much available through out and had also attended ceremonies. On this aspect, the reference may be made to the detailed averments as made in the affidavit-in-reply dated 23rd February, 2000 and the affidavit dated 8th March, 2000 filed by the petitioner. In such a fact situation, we find that the allegation that the petitioner was absconding and was not available for the service of the detention order are not well founded and in any case, without actually going through the detention order, the learned single Judge could not

have come to the conclusion as to whether the order had been passed for a wrong purpose or not. The respondent Nos.1 and 6 could be directed to produce the detention order in the manner indicated as above and only, thereafter it could be considered as to whether the same was passed for wrong purpose or not and as to whether the case was covered under any of the five categories mentioned in Alka Subhash Gadia's case (Supra). Thus, we find that the case of the petitioner as was urged before the learned single Judge, has not been effectively adjudicated keeping in view the pleadings in totality and without actually having the grounds of detention before the Court. It is always open for the Court at least to go through the order so as to examine, as to whether the matter is covered by any of the five categories laid down in the case of Alka Gadia (Supra) or not before deciding as to whether the petitioner is entitled for relief or not.

7. Our finding is that the order passed by the learned single Judge suffers from the vice of non-adjudication or lack of effective adjudication on the points urged before him. Therefore, in our opinion, the matter deserves to be remanded back to the learned single Judge who may require the petitioner to remain present before the Court for the service of the detention order on a fixed date which may also be made known to respondent Nos.1 and 6 and after going through such detention order appropriate order be passed. To see that the purpose of filing the petition at pre-execution stage is not defeated, we also order that even if the detention order is served upon the petitioner ordered as above he should not be put under arrest/detention without the leave of the Court. It will be open for the learned single Judge to consider as to whether such leave is to be granted or not or as to whether the petitioner is entitled to any interim relief or not. It will also be open for the petitioner to apply for amendment of the petition in the light of the detention order and grounds in support thereof.

9. We accordingly allow this appeal and hereby quash and set aside the impugned order dated 8.3.2000 passed by the learned single Judge. The matter is remanded back to the learned single Judge to proceed further and decide the same afresh in accordance with law in the light of this order passed by us. No order as to costs.

(M.R.Calla,J.)

(Ravi.R.Tripathi,J.)

(vrp)